App. F. IX-4

A.

1937.
(Legs)

Previous References

File No. 22 g

Serial Nos. 1

Letter References
Legs 6-38-1

PRESERVED

63

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. one only.

Part A for February 1938.

SUBJECT.

Bill further to amend the Code of Civ Procedure, 1911.

~~Order~~ Notification No. P4651/Legs/22-37-1 dated 10.2.1938

Extract from file D. No. 1886/FI. re- report on the indebtedness of officials.

-----:O:-----

x x x x x

1) Another bill amending the Civil Procedure Code has been introduced in the Legislative Assembly. It is published in the Gazette of India of 16th February 1935. It seeks to amend Section 51 and Order XXI, Rules 37 and 40 in regard to imprisonment of Judgment-debtors. The object is to protect honest debtors from detention in the Civil Prison and to confine such detention to debtors proved to be recalcitrant or fraudulent. The bill provides that no order for execution by detention in prison shall be issued unless the debtor has been given an opportunity of showing cause why he should not be committed to prison and the Court is satisfied for reasons recorded in writing, that the debtor is likely to leave the local limits of the jurisdiction of the Court or has fraudulently disposed of his property or that he is able to pay the amount of the decree otherwise than from protected assets. This is on the lines of the provision of law at present in England. If approved, we may also introduce an amendment to the Civil Procedure Code, on the same lines in this Bill. (Mr. K.T. Bhashyam Aiyangar has applied for permissio of the Dewan to introduce a similar amending bill and this is being worked up separately)

2) The third bill introduced in the Legislative Assembly seeks to provide for the execution of decrees passed by Courts in the United Kingdom and other recoprocating territory. But this is not applicable to us.

Intd/- C.S.
19/3/35

General Secretary)

3)

Intd/- H.V.R.

First Member)

Amendment of Civil Procedure Code
Attachment of pay

Serial No.

reciprocating territory. But this is not applicable to us.

please see
Legco 6-38
Notes, page 20

GENERAL SECRETA
20 MAR 19

OFFICE OF THE FIRST MEMBER OF COUNCIL
No. 6790

(24) I think that the point of the 2 WB referred to above, namely the Indian legislature assembly may be adopt or made by reference to the Act in London habit is necessary to connect the Applicant with the Court. Mackenzie

by
by 21/3
21/3
by 21/3
by 21/3/35

(25)
Draft Indent
Done 21/3

Issued vide P 5291 dt 26.3.35

6 The Registrar High Court
Inviting the Opinion of
the High Court Re the amendment
to C.P.C. under consideration
in the Legislative Assembly

Serial No.

4

No 218 of 29/6 from Regr High Ct. stating that legislation may be postponed till the bills are passed by the Imperial legislature.

7/35) Subd. with reference to para 24 Supra.

Secy 5/7 Noted

9/35) Submitted for perusal the views of the High Court. We may await the passing of the two bills in the Legislative Assembly as suggested by the High Court.

(1st Member) 6/7/35

9) 34) 6/7/35 Secy 6/7

6/7

Extract from G.I file 412-34 Re Report on official indebtedness.

Subject arising the exemption limit of attachment of pay by civil courts from Rs 20 to Rs 50

Discussion in Council 31-1-35

Adopt the Bill subject to revision.

Extract from G.O. No 219 47-58 — 412-34-28/6/35 Govt. are also of opinion

OFFICE OF THE FIRST MEMBER 6 JULY 1935 No 177

1 Secy for taking ... Secy 4/7 Secy 8/7 G.I.T.

that in regard to the question of the limit of exemption from attachment of any satisfaction of civil court decrees, the provisions of the Bri. Indian Code may be adopted. Action will be taken to amend the Indian C.P.C accordingly.

10.

(a) A draft Bill for the purpose of (as enumerated in the margin) raising the limit to Rs 400/- as in Bri. India. But the Govt. of India have recently introduced a Bill raising the limit to Rs 1000/- The High Court was again consulted. They have suggested that the legislation here may be deferred till the Bill in the Imperial Legislature is passed into law. It is accordingly proposed to await the Bill becomes law in

Amendment of Secrecy

Amendment to Civil Procedure Code

File No. D 780. of 193 .

General and Revenue Secretariat

after the Bills in regard to this matter pending in the Imperial legislature are disposed of. The First Member has approved of this (vide notes above dated 6.7.35)

Chief Secretary) 6.

13/7/35

13/37) 16/7 Mr Perera

15/7

13/38) 16/7

16/7

16/7

The Bills have not been passed into Law. It is proposed that they may be kept in force for some more time.

See 6/11

13/40) 6/11

1 Fe

CHIEF SECRETARY 15 JULY 1935

OFFICE OF THE FIRST MINISTER COLOMBO 15 JULY 1935 No. 490

1) Let Secretariat for Kindly noting if Bills have been passed

16/7/35

1) Bill re amendment of Secretariat refused by S.C on 9.4.1935 (Box 2) Bill re amendment of Secretariat refused by S.C on 13.9.1935 (Box 2) Prohibition of Women)

OFFICE OF THE SEC

Amendment to Civil Procedure Code.

Serial No.

17) The further stages of this Bill are to be found in the copies of the Po. A. Debates received in this office since the 6th inst.

Prot. Br. a.c)

14.3.36

Le

18) Le. Section with Compliments Kindly to note whether the Bills in question have been passed into Law.

19) 1) Report of the S.C. to amend Sec. 51. presented to the Assembly on 25th March 1936 — pp. 3201 of the Po. A. Debates 1936

2) " to amend Sec. 60 " "

20th. March 1936 — p. 2964 of the Po. A. 1936

Prot. Br. a.c)

18/8/36

20) Submitted for perusal.

21) Have They been passed in the Assembly. Mrs

Le.
A. Section has promised to look to further reference and furnish the information during 1st week of June 1936 vis B Bill 15-6-36

OFFICE OF THE SECRETARY 24 AUG. 1936 Contn. Sheet to REPRESENTATIVE AND LEGISLATIVE COUNCIL

WD 03594—GPB—30,000—18-7-35

Serial No.

Letter No 541 Dt 26.10.36 from the Private Sec to H.H. The Maharaja in the matter of action in Connection with the matter of arrest and imprisonment for debt.

Minute Of the Dewan on the P.W.D
1st Member With Compliments"

(Sd) M.M.I.
25.10

Minute Of the First Member
" Chief Secretary W.C. for a note with a Of the bill"

(Sd) S.P.R. 2/11.

Chief Secretary's Minute
"Law Dept early"

(Sd) B.T.K. 5/11

29/54) Government now action has already been taken in regard to the question Of amending the Civil procedure Code on the lines Of the following two bills introduced in the Legislative Assembly (Govt of India)

(1) Bill No II relating to the attachment of Salaries

Re. the amendment of Civil procedure code. 1311

File No. 20 D.774. of 193 . General and Rever Secretariat

	Serial No.	
) Bill No 9 relating to the imprisonment Of Judgment-debtors.		Hay J
5) Kind reference is invited to discussions in paras 25 to 29 Of the notes in regard to the action proposed to be taken for amending the Civil procedure Code. The High Court was Consulted on this behalf and Kind reference is invited to the High Court letter Of 29-6-35 in the matter. It was ordered that steps might be taken to amend the Code after the above Bills were disposed Of.		Hay R (vide paras 36 of notes)
4) It is seen that the Bill relating to the imprisonment Of Judgment debtors has been passed into law. Kind reference is invited to Act XXI Of 1936 printed on pages 63-64 Of Gazette Of India Gazette Of 7-11-1936 part IV. ~~Section of Local Legislation~~		
With regard to the other Bill, the L.C. Section may be requested to State whether this Bill has also been passed into law.		
5) Submitted for orders with reference		
6) Please see this information from L.C Section & put up a file		

Le. Sec (M.)

12-11

Serial No.

Letter No 541 Dt 26-10-36 from the Private Secretary to H.H. the Maharaja in the matter of taking action in connection with the matter of arrest and imprisonment for debt.

Minute of the Dewan on the P.W.D
" First Member With Compliments"

(Sgd) M.M.I
26-10-36

Minute of the First Member
" Chief Secretary W.C. for a note with a copy of the bill"

(Sgd) S.P.R. 2/11

Chief Secretary's Minute
"Law Dept early"

(Sgd) B.T.K. 5/11

It is submitted that action has already been taken in regard to the question of amending the Civil procedure Code on the lines of the following two bills introduced in the Legislative Assembly (Govt of India)

(1) Bill No II relating to the attachment of Salaries

Re. the amendment of Civil Procedure Code
2725/36
P.D. 774. 20 6-

Serial No.

35)
60) Volumes VI, VII and VIII (part 4) of the B.A. Debates which have since been received have been looked into. There is no reference therein as to Bill no 11 (Amendment of Sec^n. 60) having been passed ~~into~~ by the Assembly.

Prot^n - B^r a.c)
18/11/36

36)
61) Resubmitted with reference para 59 of the notes.

37 62) Reference - 1st member minute dated 2-11-36- one of the Bills referred to in paragraph 33 viz amendment of Sec 51 of the Code of Civil Procedure to give protection to honest debtors has been passed into Law & is published in the Government of India Gazette Pg V page below. By Virtue of this Act Sec 51 of enacted I.R. 37 & 40 have been amended. These provisions relate to the arrest of Judgment debtors and the exemptions that can be claimed by them under certain circumstance

38 63) No other Bill was receiving the assent of Salary for exemption from attachment has not been to have been passed into Law. In view of above passed in paras 33 & 37 it is a point for Consideration

it is the Act viewed to by Sir Chandrasekhara

NOTE—Contn. Sheet.

WD 0417—GPB—30,000—8-9-36

Re. the amendment of the Civil Procedure Code

27?

File No. | of 193 | General and Revenue Secretariat

Serial No.

Whether we can now proceed with amending the Sec 51 of C.C.P as in British India and postpone the amendment of Sec 60 of C.C,

39 (64) hig secretary) The amendment may be taken up here for consideration. HOJ 19.11 MK 24/11 HOJ 24.11

19 NOV. 1936

(15 members)

OFFICE OF THE FINANCIAL ADVISER 25 NOV 1936 No. 3.4.4.3.

(65) JPJ 1/12 MK 2/12 HOJ 1.12

17

Spring Section W.C. Kindly to furnish 2 spcd Copies of the portion of the Bill enclosed in Brackets (Blue pencil) in half margin. Flag J

(43) HOJ 7.12

TYPING 7 DEC 1936 GENERAL

43 JPJ

(53) A draft Bill on the lines ~~of the Madras Act~~ of the Bill introduced in the Legislative Assembly and also of the Act XXI of 1936 is Flags J J 4 V submitted herewith for orders. A Statement of objects and reasons is also put up. The latter follows the Statement ~~introduced~~ published in

2720

Amendment to Civil procedure code (Sec 51)

General and Revenue Secretariat — File No. 104 of 1934 — [App. F. III—2

Serial No.

J — Govt of India Gazette of 16.2.35 and also para 27 of the notes.

H & H — 4464) The d.c. file 136-34 relating to the introduction in the L.C. of ~~the~~ ~~Bill~~ similar Bill by Mr K.T. Bhashyam Iyengar is put up for reference. The Bill was however withdrawn by the ~~member~~ mover. Kind reference to is invited to the discussions printed on pages

H & A — 37 to 40 of the R.A. proceedings of June 1936. Reference is also invited to the ~~Object~~ Statement of Objects and Reasons ~~which~~ by the

" B — member on that occasion)

R — 4570) (The High Court has stated that ~~the~~ if the Secs of the Code are amended by Legislation, the question of amending the rules in Schedule I can be taken up by the High Court and the Rule Committee in the ordinary way)

Sent with 2 drafts

CPC 4/IV — 4671) Please adopt as circulated personally HP 22-12

7/12 — Resubmitted with typed copies of the Draft Bill and also the Statement of Objects and Reasons

CPC 4/IV — 48/73 In the amending bill only 2 sections are added corresponding to

WD 0417--GPB—30,000-6-9-36

File No. of 193 | General and Revenue Secretariat

Serial No.

Section 112 of the Government of India Act XXI of 1936. 2 other sections are passed regarding amendment of order 21 Rules 37 & 40 of C.C.P. in the Govt of India Act

5974 The High Courts of Mysore in Consultation with the Rule Committee is Competent to amend Rules 37 & 40 by virtue of the powers vested in it under Sec 122 of C.C.P. The legislature therefore need not interfere with this power.

5975 Even in British India the High Courts are Competent to pass such Rules if they are considered necessary. To secure uniformity of practice in the several High Courts in British India the Govt of India had to introduce legislation to amend Rules 37 & 40. There is no such difficulty here (as seen)

HDJ 26.12.

5176 What about assets amounting a Govt servants pay when shd be exempt from attachment? Vide para papers by 1965—

JWW 29/12

5277 Please see paras 33. 34 & 37. This legislation is proposed to be taken up

GENERAL SECRETARIAT 26 DEC 1936

2725

Amendments to Civil Procedure Code

DEV. General and Revenue Secretariat
19 JAN. 1937
No.

File No. of 193 [App. F. III—

Serial No.

2693
19.1.37 M

after Bill 11 of the legislative Assembly passed into Law. The amendments made in para 64 & 65 relates only to amendments of Sec 51 of CCP only & not of Sec 6. I have consulted the Chief Secy on this.

Gen Secy)

GENERAL SECRETARY.
5 JAN. 1937
137

5378 The draft amendment with Stg Ors reasons may be appd.

Gen
15/1/37
hop
15-1

Sec Member)

OFFICE OF THE SECOND MEMBER OF COUNCIL.
15 JAN. 1937
No. 4884

5379 Gen
18/1/37
Gen
18/1/37
hop
19-1
hop
15-1

Gen)

5380 Gen
20-1-37 Gen
21/1/37
hop
21-1

This is a council matter. Suitable orders. This may be disposed of by circular

Sec
21.1

hop

WD 0117—GPB—30,000—8-9-36

DEPT. General and Revenue Secretariat
19 JAN. 1937
No.

Amendments to C.P. Code

Serial No.

2693
19.1.37 M

after Bill 11 of the legislative Assembly is passed into Law. The amendments moved in para 64 & 65 relates only to amendment of Sec 51 of C.C.P only & not of Sec 60. I have consulted the Chief Secy on this point.

Gen. Secy)

hoy
6.1

GENERAL SECRETARY.
5 JAN. 1937
137

5378 The draft amendment with Stg Pj reasons may be appd-

Gud
15/1/37

hoy
15-1

OFFICE OF THE SECOND MEMBER OF COUNCIL.
15 JAN. 1937
No. 4884

Sec Member)

5379 Gud
18/1/37

Gud
18/1/37

hoy
19.1

hoy
15-1

Secretary)

5380 Gud
20-1-37

Gud
21/1/37

hoy
21.1

5381 This is a council matter. See orders. This may be disposed of by circn

Chief Secy

C.S.

hoy
21.

WD 0417—GPB—30,000—8-9-36

A Bill further to amend the Code of Civil Procedure, 1911.

...

Whereas it is expedient further to amend the Code of Civil Procedure, 1911, for the purposes hereinafter appearing; it is hereby enacted as follows:-

1. (a) This Regulation may be called the Code of Civil Procedure (Amendment) Regulation of 193

Short title.

(b) It shall extend throughout the State of Mysore.

(c) It shall come into force from

2. To section 51 of the Code of Civil Procedure, 1911 (hereinafter referred to as the said Code) the following proviso shall be added, namely:-

Addition of Proviso to section 51.

"Provided that where the decree is for the payment of money execution by detention in prison shall not be ordered unless, after giving the judgement-debtor an opportunity for showing cause why he should not be committed to prison, the court for reasons recorded in writing, is satisfied-

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,-

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property; or

(b) that the judgment debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same; or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation: In the calculation of the means of the judgment debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

DEPT. General and Revenue Secretariat
19 JAN. 1937
No.

2725

Amendments to Civil Procedure Code (1)

File No. 215 of 193 [App. F. III—2

Serial No.

2493
A.1.37 M

after Bill 11 of the Legislative Assembly is passed into Law. The amendments moved in para 64 & 65 relates only to amendments of Sec 51 of C.C.P only & not of Sec 60. I have consulted the Chief Secy on this point

Gen. Secy) 19/1

GENERAL SECRETARY.
5 JAN. 1937
137

53/78 The draft amendment with Stg Pr reasons may be appd.

Gen
15/1/37
19/1

Sec'l member)

53/79 Nil
18/1/37
Gen
18/1/37
19/1
19/1

Dewan)

53/80 Nil
20-1-37 Gen
21/1/37
21/1

56 This is a council matter. orders. This may be disposed of by

C.S.
Contn. Sheet 19
GOVT. OF MYSORE.

WD 0417—GPB—30,000—8-9-36

56/21/1 Chief Secy C.S.

57 Circulate.

21/1

please see
note
para 47

A Bill further to amend the Code of Civil Procedure, 1911.

...

Whereas it is expedient further to amend the Code of Civil Procedure, 1911, for the purposes hereinafter appearing; It is hereby enacted as follows:-

1. (a) This Regulation may be called the Code of Civil Procedure (Amendment) Regulation of 193

Short title.

(b) It shall extend throughout the State of Mysore.

(c) It shall come into force from .

2. To section 51 of the Code of Civil Procedure, 1911 (hereinafter referred to as the said Code) the following proviso shall be added, namely:-

Addition of proviso to section 51.

"Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity for showing cause why he should not be committed to prison, the Court for reasons recorded in writing, is satisfied-

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree, -

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property; or

(b) that the judgment debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or - - neglected to pay the same; or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation: In the calculation of the means of the judgment debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the - decree.

lbj

Statement of objects and Reasons.

The Bill seeks to amend Section 51 of the Code of Civil Procedure 1911 in regard to the imprisonment of judgment-debtors. The object is to protect honest debtors from detention in the civil prison and to confine such detention to debtors proved to be recalcitrant or fraudulent. The Bill provides that no order for execution by detention in prison shall be issued unless the debtor has been given an opportunity of showing cause why he should not be committed to prison and the court is satisfied, for reasons recorded in writing, that the debtor is likely to leave the local limits of the court or has fraudulently disposed of his property or that he is able to pay the amount of the decree otherwise than from protected assets.

The bill applies to all judgment-debtors. This is on the lines of Act XXI of 1936 of the Indian Legislature.

Statement of Objects and Reasons.

Please see Notes) para 4

The Bill seeks to amend Section 51 of the Code of Civil Procedure 1911 in regard to the imprisonment of judgment-debtors. The object is to protect honest debtors from detention in the civil prison and to confine such detention to debtors proved to be recalcitrant or fraudulent. The Bill provides that no order for execution by detention in prison shall be issued unless the debtor has been given an opportunity of showing cause why he should not be committed to prison and the court is satisfied, for reasons recorded in writing, that the debtor is likely to leave the local limits of the jurisdiction of the court or has fraudulently disposed of his property or that he is able to pay the amount of the decree otherwise than from protected assets.

The Bill applies to all judgment-debtors. This is on the lines of Act XXI of 1936 of the ~~Government of India~~. Sindh Legislature -

4

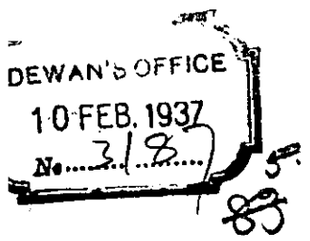
or Disposal by Circulation.

No. C. 172 9

1936-1937

GENERAL AND REVENUE SECRETARIAT.

Council Matter.



Bill further to amend the Code of Civil Procedure, 1

Circulated to the Members of Council.

By Order,

2nd January 1937.

Chief Secretary to Government.

rst Member of Council.

cond Member of Council.

For favour of Trial (1st member)

S. N. put up.

Dewan)

Final Note by the First Member of Council.

Subject.— Bill further to amend the Code of Civil Procedure, 1911.

61) One of the recommendations of the Royal Commission on Labour in India was to the effect that in the case of Industrial workers in receipt of wages less than Rs.100 per month, arrest and imprisonment for debt should be abolished, except where the debtor has been proved to be both able and unwilling to pay. Action was taken in British India on the basis of this recommendation to protect all honest debtors of all classes from detention in civil prison, and confining such detention to debtors proved to be recalcitrant or fraudulent, by amending Section 51 of the Civil Procedure Code.

62) It is now proposed to amend our Civil Procedure Code also similarly. The Bill provides that no order for execution by detention in prison shall be issued unless the debtor has been given an opportunity of showing cause why he should not be committed to prison, and the court is satisfied that the debtor is likely to leave the local limits of the jurisdiction of the court, or has fraudulently disposed of his property or that he is able to pay the amount of the decree otherwise than from protected assets.

63) The Dewan and the Second Member of Council have agreed to this proposal, and gracious sanction of His Highness is solicited to introduce the Bill at the next Session of the Representative Assembly and Legislative Council.

MEMBER OF COUNCIL.

Bangalore,
9th February 1937.

Submitted to His Highness.

---

87 64) I submit herewith a Final Note by the First Member of Council regarding the Bill further to amend the Code of Civil Procedure, 1911,

for His Highness' gracious approval.

Mirza M.
Dewan.

Record of Cases submitted for t

His Highness the Maharaja.

Subject.

Bill further to amend the Code of Civil Procedure, 1911.

C 172.

SUBJECT:— Bill further to amend the Code of Civil Procedure, 1911

(*)

31. All urgent or confidential files returned with His Highness' orders may in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Headquarters and then sent to the Secretariat concerned for the issue of orders.

66)

Circulated to Members of Council for perusal of His Highness' orders before/~~after~~ issue of orders. (*Vide* Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

Chief Secretary to Government.

Through the Secretary to Government,

..... Department.

FIRST MEMBER OF COUNCIL.

5871
13.2.37

SECOND MEMBER OF COUNCIL.

13/2/37

Amendment to Civil procedure Code

Serial No. 67)

67) Submitted with a draft embodying the General principles of the Bill to amend Sec 51 of the Code of Civil procedure 1911 in regard to the imprisonment of judgment-debtors

CPW 23/3

68) please put it up 2 weeks hence meanwhile the amendment of Sec 60 as the law of 1937 Act may be taken up for consideration WD 23.3

For B till 8.3.37

69) Re-submitted for orders.

The Govt of India Gazette of 13.3.1937 is placed below for perusal. Kind reference is invited to Act No IX of 1937 amending the Code of Civil procedure. (Amendment of Section 60 of the Code) relating to the attachment of Salaries.

For S

CPW 19/3

WD

70) Re-submitted with a printed Compilation of L.A Debates Vol I - 12 as directed

Kind reference is invited to discussions in

WD 6417—GPB—30,000—8-9-36

Amendment to the preamble etc. /

D 854/RL

Subject No. of 19 . * General and Revenue Secretariat

Serial No.

in pages 650-658 of the Compilation placed below in regard to the Amendment of Section 60 of C.P.C. Flag L

(submitted 21/4) The ~~amendment~~ amendment to Sec 60 can be considered separately in a new file. There are many Controversial points regarding this per mission & His Highness has been advised to proceed with the amendment of Sec 51 on the lines of B.J. Act. The General principles of the Bill amending which have to be placed before the next R.A is submitted for Consideration

(8th December) 8.4.

3 APR. 1937 No 6444

Typed & Sent 3/4 mrs 5/4 6.4.

Typing Section kindly furnish 4 copies of the statement of General principles mentioned below.

(13-6) Submitted with 4 typed copies of the General principles.

These may be sent to the R.A Section (Sgd.) 7.4

SECRET 13 APR. 1937

Serial No. 75

(76) Rules for orders in the Bill and the Statement of objects and reasons may be published under rules of the L.C rules for being adopted in June

Last date for publication June 3rd.

17/5/37

(76 cyclo) may be published (for members of Devan)

17.5

(77 ~~100~~) 21/5

(78 ~~101~~) 21-5-37

21.5.37

during one hour or typing 4 copies the Bill & Statement of objects & reasons. To L.C office with typed copies for publication.

27/5

(79 ~~102~~)

(80 ~~103~~)

27/5 Three copies taken and the file put to the Printing Bx.)

27/5/37

Imp. No. 6641/L.C. 1200.

OFFICE OF THE RT MEMBER FOR INDIA 17 MAY 1937 No. 2210

5223

No. of 193 | General and Revenue Secretariat

ria
No.

83)
10/6
Q. Whether the general principles of this Bill is to be placed before the ensuing R.A. Council for orders as to the Secy who is to be in charge

Sec
10/6/37

84) 10/6/37 Yes Secy may be in charge of this Bill.

Chief Secy)

1st member
Hon' Gulsar}

10/6
10/6
10/6
11/6
11/6

CHIEF SECRETARY.
10 JUN 1937
GOVT. OF MYSORE.

GENERAL SECRETARY
11 JUNE 1937
3015

85) Jon 11/6 11/6 12/6

86) Expd 15/6/37. agreed by House

Hon 16/6/

87) Submitted with a note
(1st member)

10/6
23.6.

88)
may be sent to reporting section of L.C office for kindly noting the names of members of the Select committee to which the Bill was referred.

Sec
6/7 B/Sn 10/6 6-7

The following names are suggested from the S.C members

1) Mrs Laxmiramma
2) B. D. Kesavienger
3) R. Balakrishnaiah
4) H. C Dasappa
5) D. V. Gundappa
6) J. Imam
7) Hazaradan Ro

OFFICE OF THE FIRST ASSISTANT SECRETARY
24 JUNE 1937

General Principles of the Bill to amend Section 51 of the Code of Civil Procedure, 1911.

One of the recommendations of the Royal Commission on Labour in India was to the effect that in the case of Industrial Workers in receipt of wages less than Rs.100/- per month, -- arrest and imprisonment for debt should be -- abolished except where the debtor has been -- proved to be both able and unwilling to pay. Action was taken in British India on the basis of this recommendation to protect all honest debtors of all classes from detention in civil prison, and confining such detention to debtors proved to be recalcitrant or fraudulent, by amending Section 51 of the Civil Procedure Code.

It is now proposed to amend Section 51 of the Code of Civil Procedure 1911 on the lines of Act XXI of 1936 of the Indian Legislature. The Bill provides that no order for execution by detention in prison shall be issued unless the debtor has been given an opportunity of showing cause why he should not be committed to prison, and the Court is satisfied that the -- debtor is likely to leave the local limits of the jurisdiction of the Court, or has fraudulently disposed of his property or that he is able to pay the amount of the decree otherwise than from protected assets. The Bill -- applies to all judgment debtors.

NOTIFICATION.

No. 4641—L. C., Bangalore, dated 28th May 1937.

Under Rule 8 of the rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Code of Civil Procedure, 1911, is published for general information with the statement of objects and reasons.

By Order,

A. SUNDARARAJA RAO,

Secretary,

Mysore Legislative Council.

Bill further to amend the Code of Civil Procedure, 1911.

Whereas it is expedient further to amend the Code of Civil Procedure, 1911, for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. (*a*) This Regulation may be called the Code of Civil Procedure (Amendment) Regulation of 1938. *Short title.*

(*b*) It shall extend throughout the State of Mysore.

(*c*) It shall come into force from 1st July 1938.

2. To Section 51 of the Code of Civil Procedure, 1911 (hereinafter referred to as the said Code), the following proviso shall be added, namely:— *Addition of Proviso to Section 51*

"Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity for showing cause why he should not be committed to prison, the Court for reasons recorded in writing, is satisfied—

(*a*) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property ; or,

(*b*) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same ; or

(*c*) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation.—In the calculation of the means of the judgment-debtor for the purposes of clause (*b*), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

Statement of Objects and Reasons.

The Bill seeks to amend Section 51 of the Code of Civil Procedure, 1911, in regard to the imprisonment of judgment-debtors. The object is to protect honest debtors from detention in the civil prison and to confine such detention to debtors proved to be recalcitrant or fraudulent. The Bill provides that no order for execution by detention in prison shall be issued unless the debtor has been given an opportunity of showing cause why he should not be committed to prison and the Court is satisfied, for reasons recorded in writing, that the debtor is likely to leave the local limits of the Court or has fraudulently disposed of his property or that he is able to pay the amount of the decree otherwise than from protected assets.

The Bill applies to all judgment-debtors. This is on the lines of Act XXI of 1936 of the Indian Legislature.

Printed by the Superintendent at the Government Press, Bangalore.

Serial No.

DEWAN'S OFFICE
12 AUG. 1937
No.....1116..

88
(89) The names are noted below

1. Mr. Mirle Lakshminarayanappa,
2 " B. D. Kesaviengar,
3 " S. G. Sastry,
4 " H. R. Gururao Reddy,
5 " B. S. Puttaswamy,
6 " T. Ramachandra, and
7 The Mover (First Member of Council).

Lgk 6.7.37. Prof. GV

(90) Secd. for order

date & hour of the meeting of the Select Committee.

5e/8

(90) Resolved. for ordering date of S.C meeting.

5e/7/8

(91) A convenient date has to be fixed for the Select Committee meeting. Dusserah commences from the 5th October 1937. The R.A.Session commences on the 16th October and may end on or about the 24th October.

(1st Member) hg 10-8

(92) The ... was pleased to order that the meeting may be held on some day in the latter part of September.

Saturday the 25th September (1 PM) may be fixed

(1st Member) hg 12-8

WD 0417—GPB—30,000—8-9-36

(93) JP 13/8

hg 12-8

1937 ~~1937~~ S 1 7 3 7 5711

364 C. P. C Bill 1680

File No. of 193 General and Revenue Secretariat

Seria No.

94) Send with a draft notice of the meeting of the S. C.

See 9/9.

95) issued by C.S.
Issued No. p 1462-67 of 13.9.37
Issued No p 1664-9 of 22.9.37

96) The S.C. meeting on this Bill is fixed at 2 p.m. tomorrow (8th instant) by 24.9.

97) Send with the S. C report signed by the members.
" approved, copies may be made & sent to the Officer for publication

See 23/9 98) Yes by 25/9

Depy Secy for make 3 copies the report See 23/9.

99) The Officer sent in copies of the S. C report for publication.

See 28/9 100) Two copies taken and file put to Prot. Br.)

28/9/37 29 101) The Bill was passed at the recent Session of the L. C. Send with a D. O. L.

See 27/1/38 (8th instant) Two

OFFICE OF THE SECRETARY
U.P.S.R.
28 SEPT. 1937
REPRESENTATIVE ASSEMBLY AND LEGISLATIVE COUNCIL.

L/C Sec GE 28 JAN. 1938 4264

975

General and Revenue Secretariat	File No.	of 193	[App. F. III—2

Serial No. 103

With final note signed by the Member, 1st May 1938.

Dewan

3.2

...FEB. 1938
...5103.

please see
Notes. paras 9 7

3 B

We, the Members of the Select Committee appointed to consider the Bill further to amend the Code of Civil Procedure, 1911, have considered the Bill and have no alterations to recommend.

Dated Bangalore,
25th Septr. 1937.

Today signed

FFICE OF THE FIRS

The Members said that the Select Committee Meeting on Saturday the 25th inst. may be held at 2 P. M.

24/9. Circulate Members
Hon Secretaries
D.No. 1664-9 dt 22-9-37

Received
Kannada
Tamil
Telugu
Translations
Typed N. Lakshminarayanappa
Proof Read

Final Note by the First Member of Council.

Subject.—

Promulgation into Law of the Bill to amend the Code of Civil Procedure.

104) On 11th February 1937, His Highness was graciously pleased to accord sanction to the introduction of the Bill to amend the Code of Civil Procedure. The Bill was introduced in the Legislative Council in June 1937 and referred to a Select Committee. The Select Committee did not recommend any change in the Bill. The Bill was considered and passed by the Legislative Council at its recent session. It is proposed to bring the amending Act into operation from 1st July 1938.

105) I solicit the gracious sanction of His Highness for promulgating the Bill into Law.

Bangalore,
2nd February 1938.

First Member of Council.

Submitted to His Highness.

106) *I submit herewith a Final Note by the* First *Member of Council on the subject of* the promulgation into law of the Bill to amend the Code of Civil Procedure

for His Highness' gracious approval.

Mirza M. Ismail

Dewan.

Bangalore,
3rd February 1938.

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Promulgation into law of the Bill to amend the Code of Civil Procedure.

General and Revenue
Secretariat.

H.H.438

SUBJECT :—

Promulgation into law of the Bill to amend the Code of Civil Procedure.

(*)

31. All urgent or confidential files returned with His Highness' orders may in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Headquarters and then sent to the Secretariat concerned for the issue of orders.

108

Circulated to Members of Council for perusal of His Highness' orders before/after issue of orders. (*Vide* Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

Chief Secretary to Government.

Through the Secretary to Government,

General Department. 5/2

FIRST MEMBER OF COUNCIL. (on Leave)

5741
5.2.38

SECOND MEMBER OF COUNCIL.

Secy to Govt, Gen. Dept 6/2/38

Act to Amend Civil Procedure C

General and Revenue Secretariat | Legs File No. 22 of 1937. | [App. F. III—2

Serial No.	
109)	Sahu with a wrapper under for publishing the Act
	Sg 4/2/38. 110) cisno by
1.	G O no P 4657 dy 10/2/38 ordering the publication of Act IX of 1938

TYPING S... K.
10 FE 19 G
GENL & R...

THE MYSORE REPRESENTATIVE ASSEMBLY.

BUDGET SESSION—JUNE 1937.

STATEMENT OF GOVERNMENT BUSINESS TO BE PLACED BEFORE THE REPRESENTATIVE ASSEMBLY.

I. Statement of General Principles of the Bill to amend the Mysore Civil Courts Regulation, I of 1883.

The Mysore Civil Courts Regulation, I of 1883, was amended by Regulation VII of 1926 so as to make it possible to appoint more than one Subordinate Judge to a Subordinate Judge's Court and more than one Munsiff to a Munsiff's Court. On that occasion no amendment was made so that more than one District Judge could be appointed to a District Court. Whenever arrears accumulate in any District Court, it becomes necessary to establish an additional District Court with separate establishment for temporary periods. The High Court will have to formally transfer suits and proceedings from the permanent to temporary courts and re-transfer them to the permanent court when the additional court ceases to exist. Difficulties will also arise in the matter of the execution of the decrees and orders passed by the additional Court when it is abolished. The most convenient and economical course in such circumstances would be to add a Judge temporarily to an existing District Court.

The present bill is intended to provide for the appointment, when necessary, of more than one District Judge for a District Court so as to avoid the inconveniences mentioned above.

II. Statement of General Principles of the Bill further to amend the Indian Penal Code as in force in Mysore.

According to Section 375 of the Indian Penal Code as in force in Mysore, the age of consent is 12 both within and outside marital connection. This is considered insufficient for the protection of minor girls.

It is now proposed to raise the age of consent to 14 as against strangers, leaving the age in marital cases unaffected.

The age of consent in British India has been revised by Act XXIX of 1925.

III. Statement of General Principles of the Bill to amend the Mysore Town Municipalities Regulation, 1933.

The present legal position regarding the appointment and control of Chief Officers in Town Municipalities is not altogether satisfactory. Under Section 209 of the Town Municipalities Regulation 1933, it is possible to hold that the Municipal Council has power to appoint these officers subject to the sanction of Government. In practice, however, Chief Officers are appointed by Government. In the interests of efficiency, it is considered that the appointment of Chief Officers should be under the control of Government. The new sections enable Government to take power to appoint and control the Chief Officer in the case of any Town Municipal Council.

IV. Statement of General Principles of the Bill to amend the Mysore City Municipalities Regulation.

The present legal position regarding the appointment and control of Chief Officers, Health Officers and Engineers in City Municipalities, is not altogether satisfactory. In practice, Health Officers and Engineers are selected by Government and appointed as such generally in consultation with the City Municipal

Councils. The City Municipal Councils have, however, been contending that, under Sections 233 (1) and 234 (1) of the City Municipalities Regulation, the power to select and appoint these officers is vested in them subject to the sanction of Government. In the interests of efficiency, it is considered that these important appointments should be under the control of the Government and that they should be filled by posting officers from the regular cadre of the Departments concerned. The new sections enable the Government to take power to appoint and control the Chief Officer, the Health Officer and the Engineer in the case of any City Municipality.

V. Statement of General Principles of the Bill to amend Section 51 of the Code of Civil Procedure, 1911.

One of the recommendations of the Royal Commission on Labour in India was to the effect that, in the case of Industrial Workers in receipt of wages less than Rs. 100 per month, arrest and imprisonment for debt should be abolished, except where the debtor has been proved to be both able and unwilling to pay. Action was taken in British India on the basis of this recommendation to protect all honest debtors of all classes from detention in civil prison, and confining such detention to debtors proved to be recalcitrant or fraudulent, by amending Section 51 of the Civil Procedure Code.

It is now proposed to amend Section 51 of the Code of Civil Procedure 1911 on the lines of Act XXI of 1936 of the Indian Legislature. The Bill provides that no order for execution by detention in prison shall be issued unless the debtor has been given an opportunity of showing cause why he should not be committed to prison, and the Court is satisfied that the debtor is likely to leave the local limits of the jurisdiction of the Court, or has fraudently disposed of his property or that he is able to pay the amount of the decree otherwise than from protected assets. The Bill applies to all judgment-debtors.

VI. Statement of General Principles of the Bills to amend the City Municipalities and the Town Municipalities Regulations

One of the resolutions passed at the Local Self Government Conference of 1923 related to the question of effecting of periodical transfers of employees of local bodies with a view to the improvement of the morale of the officials working under the municipalities and the local boards. This question was also considered at length at the Dasara Session of the Representative Assembly in 1924. Government accepted the recommendations made at the Local Self Government Conference and at the Representative Assembly and issued orders in G. O. No. L. 6129-6192—Ml. 145-24-12 dated 19th February 1925 directing, among other things, that, as a general rule, only officials in Government service be employed by all local bodies for all non-gazetted executive and clerical appointments under them and that transfers should be effected once in three years. The above order was not, however, given effect to in the case of several local bodies as, in most cases, officials had been directly recruited by those bodies with the result that the periodical transfers were not effected as contemplated in the Government Order referred to above and officials were treated as permanent in the establishments to which they had been recruited. Government therefore directed in G. O. No. L. 2903-28—Ml. 172-33-25, dated 23rd October 1935, that the initiative for effecting the periodical transfers of the officials of local bodies should be taken by the Deputy Commissioners of Districts concerned, who should arrange for the transfers of the officials of the local bodies once in three years in consultation with the local bodies concerned.

During the discussions at the Legislative Council in December 1935, it was pointed out that full effect had not been given effect to the Government Order of 23rd October 1935 as there was no central authority who could take the initiative for the transfers of the officials, review the position and effect transfers whenever necessary and the desirability of entrusting the control of this to a single officer was suggested. Government accepted the proposal and issued orders in Government Order No. L. 5997-6017—Ml. 139-35-11 dated 7th February 1936 directing that the Revenue Commissioner shall be the initiating authority in regard to transfers of officials of certain grades in local bodies.

Though transfers are now being effected in accordance with the above orders it has been contended by the Bangalore City Municipality that the order referred to above is not in consonance with the provisions of the City Municipalities Regulation, etc., and that the initiative for the transfer of municipal officials should be with the Municipal Council.

There is at present no provision either in the City or in the Town Municipalities Regulations for the transfer of officials from one Municipality to another or to a District Board or to a Government Department. In the Madras Presidency, it is seen that provisions exist in the Madras District Municipalities Act and the Madras Local Boards Act, giving power to the Local Government to transfer the officials of the local bodies.

Government consider that there should be similar enabling provision in the City and the Town Municipalities Regulations giving power to Government to transfer the employees of all local bodies in the interests of efficiency and to delegate such powers in the case of the City Municipalities to any officer of Government. The proposed new Section is intended to enable the Government to exercise this power.

VII. Statement of General Principles of the Bill to amend the Sugar (Excise Duty) Regulation, II of 1934.

The Excise Duty on Sugar (other than *Khandsari and Palmyra* Sugar) both in British India and in Mysore was one rupee and five annas per cwt. The duty was raised to two rupees in British India with effect from 28th February 1937. The duty in Mysore had to be similarly raised, to avoid the Government of India leavying an import duty equal to the difference on the Mysore Sugar exported to British India as it would have been a serious hindrance to the free movement of sugar from the Mysore State. An Emergency Regulation was therefore passed here on 28th February 1937 raising the duty from one rupee and five annas to two rupees per cwt.

Section 3 of the Indian Finance Act, 1937, contains a provision for raising the duty on *Khandsari* Sugar from ten annas to one rupee and five annas.

As the Emergency Regulation expires on 28th August 1937 and as the enhanced duty will have to be in force after that date also, this Bill is designed to empower Government to levy the duty at the revised rates.

BANGALORE,
Dated 1st June 1937.

A. SUNDARARAJA RAO,
Secretary,
Mysore Representative Assembly.

WD 2118—GPB—400—1-6-37

Bill further to amend the Code of Civil Procedure, 1911.

(a) *Motion that the Bill published under Rule 8 of the Rules of Business be read in Council.*

THE FIRST MEMBER (*Rajamantrapravina* S. P. RAJAGOPALACHARI).—Sir, I beg to move that the Bill further to amend the Code of Civil Procedure, 1911, published under Rule 8 of the Rules of Business be read in Council.

The provision in the Civil Procedure Code for committing judgment-debtors to Civil imprisonment in execution of decrees for payment of money has been a long standing threat to the personal freedom of honest debtors. Warrants are often issued for the arrest of the debtor without being given an opportunity of showing cause against being imprisoned. Experience has also shown that creditors often insist on imprisonment as an indirect means of forcing the debtor to part with the necessaries of life which are otherwise protected from attachment. Sometimes imprisonment is used to gratify personal spite. The Royal Commission on labour recommended the abolition of imprisonment in such cases by suitable amendment of Civil Procedure Code. In accordance with that recommendation the Civil Procedure Code in British India has been amended by Act XXI of 1936. The amending bill following the British Indian Act seeks to abolish imprisonment for debt except in the case of the recalcitrant or dishonest debtor. It provides that no order for execution by detention in prison shall be passed unless the debtor has been given an opportunity of showing cause why he should not be committed to prison and the court is satisfied that the debtor is likely to leave the local limits of the jurisdiction of the Court or has fraudulently disposed of his property or having the means to pay, refuses or neglects to pay.

The General principles of the bill were placed before the R. A. at its recent Sessions and that House has agreed to these principles.

THE SECRETARY TO GOVERNMENT, GENERAL DEPARTMENT.—(MR. M. VENKATESA IYENGAR).—Sir, I beg to second the motion.

Dharmapravaha M. L. NAGAPPA SETTY.—If Power of arrest is taken away :—

1. The debtor will not get credit at least from respectable and law abiding creditors even for necessary purposes of his house hold or during illness of himself and his family or for his agricultural purposes.

2. He will be forced to deal with creditors who take the law into their own hands and can force him to repay either by violence or fear (like Patan money lenders) or who will adopt questionable methods like taking sale deeds of the property, pledges and without disclosing proper accounts and documents.

3. The amendment throws the burden of proof on the creditor which it is impossible for him to discharge actually the debtor will be able to pay and will have kept back his assets or transferred them to others' names.

4. The indigenous Banking Institutions and trade will suffer and credit of the country as a whole will suffer.

5. Our execution processes are sufficiently slow and sympathetic and there is really no need for such protection even now. The present Insolvency law and Section 55 and order 2 rule 40 Civil procedure Code (regarding arrest and ~~commitment~~) and the power the courts now have of granting instalments even after decree and the agricultural relief ~~Act~~ and the Debt Concilation ~~Act~~ are all quite sufficient to protect the honest debtor.

6. Experience has been that really few people are actually committed to ~~prisons~~. They are either released of paying small amounts or come to some arrangement with the creditor to pay by instalments. But the fear (like the fear of capital punishments) is enough to compel people to pay if he is threatened with imprisonment.

7. The analogy of England and other Western countries cannot apply here or in Madras as we have peculiar personal laws like joint family rights and women and minors rights and other regulations which complicate title and make it difficult to advance only against immoveable properties. The only credit will often be personal credit and this will be lost.

Moreover in those countries law will be much more swift and commercial honesty greater.

Section 55 Clause 3 & 4 page 35 of Volume V Order 21, Rule 40 Civil Procedure Code.

If the Government are very particular of passing the bill may I suggest that the bill be so amended as to shift on to the debtor the burden of proving that he is really unable to pay his debts ?

I appeal to the Government to withdraw the Bill and appeal to the Hon'ble Members of the House to support me in the interest of both creditors and debtors, particularly debtors.

MR. G. GIRIMAJI RAO.—I do not want to subscribe myself to the views of Mr. M. L. Nagappa Setty in opposing this bill. This is a wholesome bill aimed at protecting the honest judgment debtor. There are safeguards here in the case of the creditor also against fraudulent motives of the judgment-debtor. Even in spite of the Debt Conciliation Bill, there is protection to the creditor. In Western countries, the system of imprisonment for debt has been long given up. I do not see any reason why this system should continue here even now.

As regards the powers, there are too many powers given to the judge to use his discretion. I think there should be some limit also. And this question may be dealt with in the select committee. I suggest the powers be limited in regard to the issue of arrest warrants of judgment-debtors.

With these remarks, I support the bill.

*MR. H. C. DASAPPA.—I am afraid that the opposition to this bill will generally emanate from capitalistic quarters and certainly not from the rest of the House. I appeal to the capitalistic powers to take a very liberal, I may say, even a compassionate view of things and stand by this bill, which is intended, as stated in the statement of objects and reasons, to safeguard the position of honest debtors.

There is just one point of Mr. Nagappa Setty which I need answer ; and that is, of casting the burden of proof. I think there is something to be said in his favour. That is a matter which I would request the select committee to include in its consideration.

MR. PRESIDENT.—The question is :

"That the Bill further to amend the Code of Civil Procedure, published under Rule 8 of the Rules of Business be read in Council."

The motion was adopted.

(*b*) *Motion that the Bill be referred to a Select Committee.*

MR. S. P. RAJAGOPALACHARI.—Sir, I beg to move that the bill be referred to a select committee consisting of :—

1. Mr. Mirle M. Lakshminaranappa
2. ,, B. T. Kesavaiengar,
3. ,, S. G. Sastry,
4. ,, H. R. Guruv Reddy,
5. ,, B. S. Puttaswamy,
6. ,, T. Ramachandra and
7. the Mover.

MR. D. V. GUNDAPPA.—Mr. Nagappa Setty is the only opponent to the bill. It is better that at least one opponent to the bill is included.

MR. S. P. RAJAGOPALACHARI.—But the principle of the bill has been passed by the House. It is not necessary that one who opposed the bill should be there at the time of the select committee, when details alone are being considered.

MR. D. V. GUNDAPPA.—If he can suggest any way of lessening the rigours of the bill or its hardships, he can give his suggestions.

MR. S. P. RAJAGOPALACHARI.—The names have been considered.

MR. PRESIDENT.—The question is :

'That th bill b referred to a select committee composed of the gentlemen named by the hon. Mover."

The motion was adopted.

Appendix F. G.–1]

SUBJECT.....

.....

.....

Section. 6

File No. 106-34

Serial No. 3

No. P 5291/—

To

The Registrar.....

High Court of Judi.

Sir.

The question of amending the Code of Civil Procedure, 1911 on the lines of the Bills No. 9 and 11 of 1935 under consideration in the Legislative Assembly, is engaging the attention of Govt and in this connection I am desired to request that the

Diary No. of letter replied to.....

General and Revenue Secretariat.

( )

the *193* .

Date of issue 26/3/35

Signed by M H V R

List of enclosures.....

Examined by.....

opinion of the Sup.
Court on the desira
of introducing similar
legislation in Cyprus
may kindly be furnished
for the information
of Govt.

I have etc

for General Secy
MS

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. PS 291 — 26

Dated, Bangalore, 25th March *193*5.

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The Registrar,
High Court of Mysore,
B a n g a l o r e.

Sir,

The question of amending the Code of Civil Procedure, 1911 on the lines of the Bills Nos. 9 and 11 of 1935, under consideration in the Legislative Assembly, is engaging the attention of Government and in this connection, I am desired to request that the opinion of the High Court on the desirability of introducing similar legislation in Mysore may kindly be furnished for the information of Government.

I have the honour to be,
Sir,
Your most obedient servant,

General Secretary to Government

R. O. C. No. 218 / 29-35

05/14-34-4

HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,

Bangalore, 27th June *1935*
29

FROM

Sundararaja Rao, Esq., B.A., B.L.,
~~Venkata Ranga Iyengar, Esq., B.A.,~~
Registrar, High Court of Mysore.

To

GENERAL SECRETARIAT
29 JUNE 1935

H.V. Ramasvami, Esq., M.A., B.L.,
General Secretary to the Government of Mysore,
Bangalore.

SIR,

With reference to your letter No.P.5291/Legis. 26th March 1935 stating that the question of amending the Code of Civil Procedure, 1911, on the lines of the Bills Nos.9 and 11 of 1935, under considerati in the Legislative Assembly, is engaging the attention of the Governmer and in that connection requesting the opinion of the High Court on the desirability of introducing similar legislation in Mysore, I am directe to state that the High Court is of opinion that there is a good deal to be said for those proposals, though the High Court is not sure that the proposed pecuniary limits are well-chosen. The High Court would, howev think that it would be wise to defer legislation in the State until tho Bills have been discussed and disposed of in the Imperial Legislature. The discussion may well be very useful and instructive. And, if legislation is postponed, unnecessary difference may be avoided, though the High Court is far from suggesting that legislation in British India should be followed in all details in Mysore.

I am further to state that in regard to Bill No.9 of 1935 the High Court considers that it is very undesirable that the course propose of making amendment to the rules in schedule I of the Code by Act sho be followed in Mysore. It is anomalous that that should be done in British India, but the object, it is to be supposed, is to ensure uniformity in different Provinces. That reason does not apply here. If the Sections of the Code are amended hereby legislation, the question of amending the

rules in schedule I can then be taken by the High Court and the Rule Committee in the ordinary way.

I have the honour to be,

Sir,

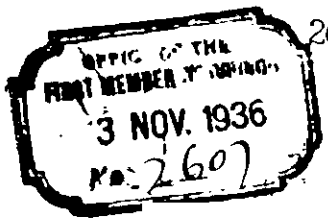
Your most obedient servant,

Registrar.

Vasantha Mahal

Mysore,

26th October 1936.



My dear Mirza,

I am afraid I have troubled you several times on the question of legislation or action by the High Court, in connection with the matter of arrest and imprisonment for debt. I see from an article which I enclose that the Government of India have at last taken action in the matter. Perhaps you have already decided to follow their example. Should you not have done so, may I suggest a study of the Act which they have passed?

Yours sincerely,

Mirza Ismail

Yours. Memo with Compts.

MR

26-10-36

MNR Ch. Let. N/C
with a copy of the Bill

Law Dept.
Early. MR
5/11

SPV 2/11

CALCUTTA:—FRIDAY, OCTOBER 23, 1936.

THE HONEST DEBTOR.

At the end of their session the two Houses of the Central Legislature at Simla passed an unspectacular measure with an unexciting title—"A Bill to amend section 51 of the Code of Civil Procedure 1908." Actually this piece of legislation is of great importance to the ordinary citizen as it removes a long-standing threat to his personal freedom. In brief, it abolishes imprisonment for debt except in the case of the recalcitrant or dishonest debtor, that is, the man who is able to pay but refuses to do so. In retaining on its statute book the power of committing judgment-debtors to civil imprisonment in execution of decrees for the payment of money India has lagged behind most other civilised countries where imprisonment for debts to private persons, save in exceptional cases, has been recognised as an anachronism, a practice conflicting with the ordinary rights of human beings. It was only in the last century, when the rediscovery of the rights of man had aroused the conscience of legislatures, that the law was so amended in these countries: in the literature of the eighteenth century, and unfortunately in the lives of many literary men at that time, imprisonment for debt played a prominent part, and not everyone could escape from the degrading conditions of contemporary jails as easily as did Mr. Pickwick. In India attempts to save honest debtors from this humiliation date back 50 years and will always be associated with the name of SIR COURTENAY ILBERT, who declared that

> "The Courts ought not to give effect to any pledge by a debtor either of his person or of the bare necessaries of life. The debtor ought not to be allowed, by his own action, supplemented by the action of the Courts, either to deprive himself of his personal liberty, or to reduce himself to starvation. If he cannot obtain credit except on one or other of these securities, it is better that he should not obtain credit at all."

SIR COURTENAY ILBERT, then Law Member of the Government of India, drafted a Bill which aroused such controversy that it was greatly modified: it was these provisions, as embodied in the Code of Civil Procedure, that the Legislature has changed at the Simla session. Under the unamended Code the period of civil imprisonment varied with the size of the debt and in any case could not exceed six months: and the Court had power, but was not compelled, to give the debtor an opportunity of showing cause against being imprisoned. In practice, as SIR HENRY CRAIK showed in his speech last year, warrants for the arrest of the debtor are frequently issued without his having any such opportunity: they are often issued before any attempt is made to realize the amount from the debtor's property or to ascertain whether he has any realizable property: in some Provinces an application for the seizure and imprisonment of the debtor's person has become an almost ordinary feature of execution proceedings. Experience has also proved that creditors frequently insist on imprisonment as an indirect means of forcing the debtor to part with necessaries of life, which are of course protected from ordinary attachment. Another motive is to bring pressure to bear on relations and friends, who may prefer payment to the humiliation of seeing the debtor in prison; in some cases imprisonment is undoubtedly used to gratify personal spite. The effect of the amendment is to make it obligatory on the Court to hold the preliminary inquiry contemplated in the Code and it limits power of imprisonment to cases where the debtor is recalcitrant, evasive or dishonest.

The chief gainers by the change will be the poorer classes, especially the masses of agricultural and industrial workers, an appallingly large proportion of whom spend their lives in perpetual indebtedness. Their champions in the Legislature claimed in fact that the Bill did not go far enough, that complete immunity from the terrors of the jail should be conferred. The Select Committee did make certain changes in the debtor's favour but the salient features are unaltered and thus the Bill takes its place with the large number of other measures passed at the Centre and in the Provinces with the object of relieving the burden of private debts. The general principles on which the Government relied received support from individual members in touch with the poorer classes who cited actual instances of hardship to honest debtors: such were CAPTAIN LAL CHAND, who spoke from experience as a lawyer practising in a district predominantly Jat, and MR N. M. JOSHI who is familiar with conditions in the large industrial centres. Such opposition as there was came from members in different parts of the House who were concerned to see that the effect of the Bill would not be to make the springs of credit dry up. The troubles of a creditor, it was said, are only at a beginning when he secures his decree and the Bill makes his difficulties worse. The measure however stands as a reasonable compromise and if it has the effect of making lenders of money more wary, so much the better. It is indeed distressing to read in these days that in the majority of cases if the Court had held the preliminary inquiry permitted under the unamended Code the debtor would never have been sent to jail. That was the finding after an inquiry made in one particular Province and SIR HENRY CRAIK said that his own experience during his inspections of jails was that in 90 cases out of a hundred there was no case of recalcitrance or evasion but the men were genuinely unable to pay their debts.

The Bill, therefore, has not come a moment too soon. Its immediate inspiration was due to the Royal Commission on Labour which recommended some such protection to industrial workers, the class of labour to which their inquiry was confined. The Government of India have gone further and extended it to all classes of debtors. To the late MR. WHITLEY and his colleagues—one of whom MR. A. G. CLOW, piloted the Bill in the Council of State—India is thus indebted for directing attention anew to this question. Tribute is also due to SIR HENRY CRAIK who in guiding the Bill from the formative stage to the House itself and then through Select Committee, could draw on a ripe experience of the poorer classes and their problems gained in a Province where indebtedness is tragic in its proportions, the Punjab.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P1462-67 Dated, Bangalore, 13-9- 1937

Official Memorandum.

A meeting of the Select Committee appointed to consider the Bill to amend the T.P. will be held in the Chambers of the First Member of Council, Public Offices Buildings, Bangalore at 1 P.M. on Saturday the 25th Sept 1937.

By Order,

Secretary to the Committee.

To 2) Lakshminarayanappa Esq.
3) B. T. Kasturiengar Esq.
4) S. G. Sastry Esq.
5) H. R. Gururaja Reddy Esq.
6) B. S. Purushottama Esq.
7) D. Rama Rao Pantulu Esq.

Copy to C.B.
Ref to Legl Member

ERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

General and Revenue Secretariat

Dated Bangalore, 13.9.

OFFICIAL MEMORANDUM

A meeting of the Select Committee appointed to consider the Bill to amend the Civil Procedure Co: will be held in the Chambers of the First Member of Council, Public Offices Buildings, Bangalore, at 1 on Saturday [illegible]

By Order,

V. Ranganayaka Iyengar
Secretary to the Committee.

Government of His Highness the Maharaja of
Mysore,

General and Revenue Secretariat,

Bangalore, 22nd Sept.1937

P.1662-9

OFFICIAL MEMORANDUM.

In continuation of Official Memorandum No
P.1462-67 dated 13th September 1937, it is intimated that the meeting of the Select Committee appointed to consider the Bill to amend the Civil Procedure Code will be held at 2 P.M. on Saturday the 25th September 1937 instead of 1 P.M.

By Order,

Secretary to the Committee.

Government of His Highness the Maharaja of Mysore,

General and Revenue Secretariat,

Bangalore, 22nd Septr.193

21664-9

OFFICIAL MEMORANDUM.

In continuation of Official Memorandum N P.1462-67 dated 13th September 1937, it is intimated that the meeting of the Select Committee appointed to consider the Bill to amend the Civi Procedure Code will be held at 2 P.M. on Saturda the 25th September 1937 instead of 1 P.M.

By Order,

Secretary to the Committee.

[redacted]

Sd/- T. Ramachandra

Sd/- Mirle N. Lakshmiranapp

Sd/- S.G. Sas

We, the Members of the Select Committee appoi ed to consider the Bill further to amend the -- Code of Civil Procedure, 1911, have considered the Bill and have no alterations to recommend.

Dated Bangalore.
25th Septr. 1937.

Sd/- S.P.Rajagopalachari

Sd/- B.T. Kesavaiengar.

Sd/- H.R. Guruva Reddy.

Sd/- B.S. Puttuswami.

Sd/- T. Ramachandra

Sd/- Mirle N. Lakshminaranapp

Sd/- S.G. Sastry.

G. R. S. App. F VI—G 2]

SUBJECT .....

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Diary. No of letter replied to .....

Section No 7

File No. 22-37

Serial No. 1

General and Revenue Secretariat

( )

the *193*

Proceedings of the Government of His Highness the Maharaja of Mysore.

Date of issue..... 10.2. ..... 193 8.

Signed by ..... Sm. A.S.R.

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada P.

Order thereon.—No. P.451. Legis 22-37-1 Secretariat.

Ordered that the accompanying Code of Civil Procedure (Amendment) Act of 1938 which received the assent of His Highness

The maharaja, on the
fourth day of February
1938 has published as
Act No IX of 1938 in
the Mysore Gazette for
general information

by
Sd/-
for Secy to Govt

2v

The Controller, Mysore
Gazette, for publication
in Part IV of the Gazette,
in English and Kannada
and for supply of three
copies in English and
Kannada as per standing
orders

List of Enclosure

Copy to Translation section

Sd/-

Copied by

Examined by

dated

Bangalore, 10*th February* 1938.

Ordered that the accompanying Code of Civil Procedure (Amendment) Act of 1938 which received the assent of His Highness the Maharaja, on the fourth day of February 1938, be published as Act No. IX of 1938 in the *Mysore Gazette*, for general information.

M. VENKATESA IYENGAR,
Secretary to Government,
General Department.

ACT IX OF 1938.

(*Received the assent of His Highness the Maharaja on the fourth day of February* 1938.)

An Act further to Amend the Code of Civil Procedure, 1911.

Whereas it is expedient further to amend the Code of Civil Procedure, 1911, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short Titl

1. (*a*) This Act may be called the Code of Civil Procedure (Amendment) Act of 1938.

(*b*) It shall extend throughout the State of Mysore.

(*c*) It shall come into force from first July 1938.

Addition of Proviso to section 51.

2. To section 51 of the Code of Civil Procedure, 1911 (hereinafter referred to as the said Code), the following proviso shall be added, namely:—

"Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity for showing cause why he should not be committed to prison, the Court for reasons recorded in writing, is satisfied—

(*a*) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation to his property; or

(*b*) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same; or

(*c*) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation.—In the calculation of the means of the judgment-debtor for the purposes of clause (*b*), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

MIRZA M. ISMAIL,
Dewan.

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

~~XXX~~

ORDER NO. P4657 Legs 22-37-1/Revenue.

Dated, Bangalore, 10th February 1938.

Ordered that the accompanying Code of Civil Procedure (Amendment) Act of 1938 which received the assent of His Highness the Maharaja, on the fourth day of February 1938, be published as Act No. IX of 1938 in the Mysore Gazette for general informati

10.2

For General Secretary to Government.

To

The Compiler, Mysore Gazette, for publication in Part IV of the Gazette, in English and Kannada and for supply of spare copies in English and Kannada as per standing orders.